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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,520	07/20/2001	Samuel Farchione	FSP-10002/08	2097
25006	7590	12/17/2003		
GIFFORD, KRASS, GROH, SPRINKLE ANDERSON & CITKOWSKI, PC 280 N OLD WOODARD AVE SUITE 400 BIRMINGHAM, MI 48009				
			EXAMINER HARRIS, CHANDA L	
			ART UNIT 3714	PAPER NUMBER 6

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/910,520

Applicant(s)

FARCHIONE, SAMUEL

Examiner

Chanda L. Harris

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: It does not identify the citizenship of each inventor.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites the limitation "said multimedia presentation" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-6, 8-13, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by MacFarlane et al. (US 5,311,293)

1. [Claims 1, 16]: Regarding Claims 1 and 16, MacFarlane discloses providing a style database (i.e. memory) including complimentary fashion information having cosmetic data and physical characteristic data (i.e. skin color); providing a personal characteristic database being adapted to receive physical characteristic data for at least one individual; communicating physical characteristic data for at least one individual from an input device (i.e. color measuring device) to said personal characteristic database; comparing said physical characteristic data for said at least one individual with said style database to identify a selection of cosmetics that are appropriate for said individual based upon said individual's physical characteristics; and identifying for said individual cosmetics that are appropriate for the individual based upon the individual's physical characteristics. See Abstract and Col.2: 47-63.
2. [Claim 5]: Regarding Claim 5, MacFarlane discloses wherein said cosmetic data comprises at least one cosmetic characteristic selected from a group consisting of colors (e.g. preselected colors of fabric, cosmetics). See Col.2: 56-63.
3. [Claim 6]: Regarding Claim 6, MacFarlane disclose wherein said physical characteristic data comprises at least one physical characteristic selected from a group consisting of skin color. See Col.2: 47-51.
4. [Claim 8]: Regarding Claim 8, MacFarlane discloses wherein said input device comprises a colorimeter. See Col.5: 33-35.

5. [Claim 9]: Regarding Claim 9, MacFarlane discloses wherein said input device comprises a spectrophotometer. See Col.5: 36-41.
6. [Claim 10]: Regarding Claim 10, MacFarlane discloses wherein said input device comprises a computer (i.e. CPU). See Abstract.
7. [Claims 11-13]: Regarding Claims 11-13, MacFarlane's invention is capable of comprising footwear information (i.e. non-skin matter) and clothing information (e.g. fabric) and wherein said clothing information includes at least one clothing data selected from the group consisting of fabric color. See Col.4: 4-8.
8. [Claim 15]: Regarding Claim 15, MacFarlane discloses cosmetic product data (e.g. hair colorants). See Col.2: 56-68.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane.

1. [Claims 2-4]: regarding Claims 2-4, MacFarlane does not disclose expressly instructional data concerning the proper application of cosmetics, wherein the instructional data comprises a multimedia presentation, and wherein said multimedia presentation comprises a video presentation. However, it is old and well known in the

Art Unit: 3714

art to have instructional data teaching proper procedures and to use multimedia and video as instructional data. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitations into the method and system of MacFarlane in order to facilitate learning.

2. [Claim 14]: Regarding Claim 14, MacFarlane does not disclose expressly wherein said personal characteristic database is accessible via a computer network. However, making databases accessible via a computer network is old and well known in the art. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of MacFarlane in order to enable remote access to the databases.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane in view of Rifkin et al. (US 6,065,969).

[Claim 7]: Regarding Claim 7, MacFarlane does not disclose expressly wherein said input device comprises a digital camera. However, Rifkin teaches such in Col.3: 58-64. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate a digital camera into the method and system of MacFarlane, in light of the teaching of Rifkin, in order to communicate a digitized picture.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

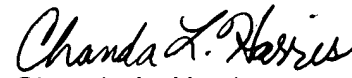
- Gouriou et al. (US 5,797,750)
 - determining foundation makeup color
- Narlo (US 6,250,927)
 - cosmetic application training
- Gourtou et al. (US 5,478,238)
 - determining the foundation makeup color

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Chanda L. Harris
Examiner
Art Unit 3714

ch.